

REMARKS

The present application was filed on July 30, 2003 with claims 1-19, all of which remain pending. Claims 1 and 17-19 are the pending independent claims.

Claims 1-5, 7-9, 13 and 16-19 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,496,499 (hereinafter "Hamilton").

Claims 6 and 14-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hamilton in view of U.S. Patent No. 6,567,653 (hereinafter "Sanders").

Claims 10-12 are indicated as containing allowable subject matter.

Claim 12 has been amended without prejudice solely to correct a typographical error and to clarify its dependency. Applicant respectfully requests reconsideration in view of the amendments above and the remarks below.

With regard to the §102 rejection, Applicant initially notes that MPEP 2131 specifies that a given claim is anticipated "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, MPEP 2131 indicates that the cited reference must show the "identical invention . . . in as complete detail as is contained in the . . . claim," citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In the present Office Action at page 3, last paragraph, the Examiner indicates a failure to accord patentable weight to certain limitations, which the Examiner characterizes as claim language that "suggests or makes operational but does not required [sic] steps to be performed or does not limit a claim to a particular structure." Applicant respectfully submits that this piecemeal examination is inconsistent with Federal Circuit precedent, which indicates that a functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. See, e.g., *Innova/Pure Water Inc. v. Safari Water Filtration Sys. Inc.*, 381 F.3d 1111, 1117-20, 72 USPQ2d 1001, 1006 (Fed. Cir. 2004) ("[G]eneral descriptive term[s] frequently used in patent

drafting to reflect a functional relationship between claimed components . . . are typically construed as having their full meaning.”) See generally MPEP 2173.05(g).

Independent claim 18 is directed to a communication system comprising a wireless network including at least one user device adaptable for communication with at least one access point device and includes a limitation wherein at least a given one of the user device and the access point device comprises a plurality of radios. In formulating the present rejection of claim 18, the Examiner contends that FIG. 5 of Hamilton shows a wireless network including at least one user device (e.g., Mobile Device 0, 1, 2 and 3) adaptable for communication with at least one access point device (e.g., $AP_0 \dots AP_n$), wherein at least a given one of the user device and the access point device comprises a plurality of radios, as recited in claim 18.

Applicant respectfully disagrees and instead submits that FIG. 5 of Hamilton clearly shows a arrangement wherein a given access point device (e.g., AP_0 , corresponding to reference numeral 302) contains a single radio (e.g., transceiver 502) and a given user device (e.g., Mobile Device 0, corresponding to reference numeral 520) contains a single radio (e.g., transceiver 522). See also Hamilton at column 6, lines 20-25 and 38-44:

In the example shown in FIG. 5, the present invention contains a wireless network 100 having an access point (AP_0) 302 that communicates with a number of mobile devices 312, 314, 316 and 520. The access point 302 contains an antenna 501 that is connected to a radio-frequency transceiver 502. . . . The access point AP, interface 509, and master controller 510 are of conventional design.

Each mobile device 312, 314, 316 and 520 contains the components illustrated in the mobile device 520. In particular, mobile device 520 contains an antenna 521 that is connected to a radio-frequency transceiver 522.

Hamilton thus fails to meet at least the above-mentioned limitation of independent claim 18.

Independent claim 17, which is directed to a processing device having a processor coupled to a memory, recites a limitation wherein the processing device comprises one of a user device and an access point device of the wireless network and further comprises a plurality of radios. Applicant respectfully submits that Hamilton fails to meet at least this limitation of claim 17 for at least the reasons identified above with regard to claim 18.

Independent claim 1, as originally filed, recited a method for use in a for use in a wireless network comprising at least one user device adapted for communication with at least one access point device, the method including a step of designating one of a plurality of radios of at least a given one of the user device and the access point device as a master radio and one or more of the remaining radios of the given device as slave radios. Independent claim 19 contained limitations similar to those of claim 1.

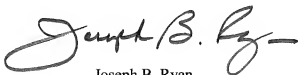
Applicant respectfully submits that claims 1 and 19, as originally filed, required that at least a given one of the user device and the access point device comprise a plurality of radios, and therefore traverse the rejection of originally-filed claim 1 and 19 for at least the reasons identified above with regard to claim 18.

Notwithstanding the above traversal, independent claims 1 and 19 have been amended without prejudice solely in order to clarify the claimed subject matter by expressly reciting a limitation "wherein at least a given one of the user device and the access point device comprises a plurality of radios" similar to that expressly recited in independent claim 18 as originally filed. Given the above traversal, Applicant submits that the amendments to claims 1 and 19 are not made for reasons relating to patentability over the cited art.

Dependent claims 2-16 are believed allowable for at least the reasons identified above with regard to independent claim 1, from which each depends. Moreover, at least one of these claims defines separately patentable subject matter.

In view of the above, Applicant believes that claims 1-19 are in condition for allowance and requests withdrawal of the present rejections.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph B. Ryan", with a long horizontal flourish extending to the right.

Date: January 23, 2008

Joseph B. Ryan
Attorney for Applicant(s)
Reg. No. 37,922
Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560
(516) 759-7517